



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R10-OAR-2016-0394, FRL-9950-55-Region 10]

Approval and Promulgation of Implementation Plans; Washington:

Updates to Incorporation by Reference and Miscellaneous Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve State Implementation Plan revisions submitted by the Washington State Department of Ecology (Ecology) on July 11, 2016. The revisions update the incorporation by reference of Federal provisions cited in Ecology's general air quality regulations. The revisions also reflect changes to the primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone, promulgated since Ecology's last update. Ecology also made minor corrections to typographical errors and non-substantive edits for clarity, such as standardizing the citation format.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2016-0394 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, Air Planning Unit, Office of Air and Waste (AWT-150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: (206) 553-0256; email address: [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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### **I. Background**

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality requirements to the EPA for approval into the State Implementation Plan (SIP). The SIP

is a state's plan to implement, maintain and enforce the NAAQS. Ecology's general air quality regulations are set forth at Chapter 173-400 of the Washington Administrative Code (WAC). The EPA last approved changes to Chapter 173-400 WAC on April 29, 2015, which incorporates by reference certain Federal regulations, as of July 1, 2012 (80 FR 23721). Washington also adopts and implements changes to the NAAQS under Chapter 173-476 WAC, which the EPA last approved on March 4, 2014 (79 FR 12078). On July 11, 2016, Washington submitted a request to update Chapters 173-400 and 173-476 WAC in the SIP, with revised Federal citations as of January 1, 2016.

## **II. Analysis of Rule Updates**

### Chapter 173-400 WAC

In order to streamline updates to Chapter 173-400 WAC and the Washington SIP, Ecology created a new section, WAC 173-400-025 *Adoption of Federal Rules*, which states, "Federal rules mentioned in this rule are adopted as they exist on January 1, 2016. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule." As part of this process, Ecology modified other sections of Chapter 173-400 WAC to remove citations to specific Federal regulation adoption dates, in order to rely on WAC 173-400-025. Ecology also corrected minor typographical errors, standardized references, and consistently formatted Federal citations. A redline/strikeout of the changes is included in the State's submittal, contained in the docket for this action. We reviewed these changes and are proposing to approve the revisions.

One outcome of Ecology's update to Chapter 173-400 WAC relates to the Prevention of Significant Deterioration (PSD) permitting program for major stationary sources in attainment

and unclassifiable areas. The Washington SIP, at WAC 173-400-720(4)(a)(vi), generally incorporates by reference the Federal PSD regulations contained in 40 CFR 52.21, with certain exceptions (80 FR 23721, April 29, 2015). As part of our April 29, 2015 final action on WAC 173-400-720(4)(a)(vi) we excluded the incorporation by reference of 40 CFR 52.21(b)(49)(v), 40 CFR 52.21(i)(5)(i), and 40 CFR 52.21(k)(2), as the Federal rules existed on July 1, 2012. These citations relate to Federal greenhouse gas, and fine particulate matter significant monitoring concentration and significant impact level provisions vacated by Federal courts after July 1, 2012 (see our proposed rulemaking for a full discussion, 80 FR 838, January 7, 2015, at page 842). After the court vacated the provisions, the EPA removed the provisions from 40 CFR 52.21 on December 9, 2013 (78 FR 73698) and August 19, 2015 (80 FR 50199). Ecology's revised incorporation by reference of these Federal regulations as of January 1, 2016, captures the EPA's removal of the vacated provisions. We are proposing to fully approve WAC 173-400-720(4)(a)(vi) because it meets current Federal requirements and is consistent with the court decisions. All other exceptions to our approval of Chapter 173-400 WAC remain unchanged since our April 29, 2015 final action.

Ecology also requested that the EPA update the Chapter 173-400 WAC citations for the Benton Clean Air Agency (BCAA) jurisdiction consistent with the exceptions noted in our November 17, 2015 final approval (80 FR 71695). As discussed in the proposed rulemaking for that action, BCAA does not implement WAC provisions related to the PSD program under WAC 173-400-116 and 173-400-700 through 173-400-750 (80 FR 55280, September 15, 2015, at page 55283). Also, as described in the proposed rulemaking for that action, BCAA local requirements

contained in Regulation I, section 4.02 apply in lieu of the WAC provisions contained in WAC 173-400-040(4), WAC 173-400-040(9)(a), and WAC 173-400-040(9)(b). The EPA is therefore proposing to approve the update to Chapter 173-400 WAC for BCAA's jurisdiction consistent with the exceptions noted above. The EPA is also proposing to revise the visibility protection Federal Implementation Plan contained in 40 CFR 52.2498 to reflect the approval of WAC 173-400-117 *Special Protection Requirements for Federal Class I Areas* for sources within BCAA's jurisdiction.

#### Chapter 173-476 WAC

The EPA last approved changes to Chapter 173-476 WAC on March 4, 2014, which contained all promulgated Federal NAAQS in existence at that time (79 FR 12078). In 2015, the EPA revised 40 CFR part 50 to include revised primary and secondary 8-hour ambient air quality standards for ozone at 0.070 parts per million (80 FR 65292, Oct. 26, 2015). Ecology's revision to Chapter 173-476 includes this update to the ozone standards and the interpretation method contained in 40 CFR part 50, Appendix U. We are proposing to approve the revisions to Chapter 173-476 WAC as meeting current Federal requirements.

### **III. Proposed Action**

We are proposing to approve and incorporate by reference in the Washington SIP at 40 CFR 52.2470(c) the following revisions to Chapters 173-400 and 173-476 WAC as shown in the table below.

State citation	Title/subject	State effective date	Explanations
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40 CFR 52.2470(c), TABLE 1 - REGULATIONS APPROVED STATEWIDE			
<b>Washington Administrative Code, Chapter 173-476 – Ambient Air Quality Standards</b>			
173-476-020	Applicability.	07/01/16	
173-476-150	Ambient Air Quality Standard for Ozone.	07/01/16	
173-476-900	Appendix A. Table of Standards.	07/01/16	
40 CFR 52.2470(c), TABLE 2 - ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION			
<b>Washington Administrative Code, Chapter 173-400 -- General Regulations for Air Pollution Sources</b>			
173-400-025	Adoption of Federal Rules.	07/01/16	
173-400-040	General Standards for Maximum Emissions.	07/01/16	Except: 173-400-040(2)(c); 173-400-040(2)(d); 173-400-040(3); 173-400-040(5); 173-400-040(7), second paragraph.
173-400-050	Emission Standards for Combustion and Incineration Units.	07/01/16	Except: 173-400-050(2) and 173-400-050(4) through (6).
173-400-060	Emission Standards for General Process Units.	07/01/16	
173-400-070	Emission Standards for Certain Source Categories.	07/01/16	Except: 173-400-070(7); 173-400-070(8).
173-400-105	Records, Monitoring, and Reporting.	07/01/16	
173-400-111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	07/01/16	Except: 173-400-111(3)(h); The part of 173-400-111(8)(a)(v) that says, • “and 173-460-040,”; 173-400-111(9).

173-400-116	Increment Protection.	07/01/16	
173-400-171	Public Notice and Opportunity for Public Comment.	07/01/16	Except: The part of 173-400-171(3)(b) that says, <ul style="list-style-type: none"> <li>“or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”;</li> </ul> 173-400-171(12).
173-400-710	Definitions.	07/01/16	
173-400-720	Prevention of Significant Deterioration (PSD).	07/01/16	Except: 173-400-720(4)(a)(i through iv) and 173-400-720(4)(b)(iii)(C).
173-400-730	Prevention of Significant Deterioration Application Processing Procedures.	07/01/16	
173-400-740	PSD Permitting Public Involvement Requirements.	07/01/16	
173-400-810	Major Stationary Source and Major Modification Definitions	07/01/16	
173-400-830	Permitting Requirements	07/01/16	
173-400-840	Emission Offset Requirements	07/01/16	
173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL)	07/01/16	
40 CFR 52.2470(c), TABLE 4 - ADDITIONAL REGULATIONS APPROVED FOR BENTON CLEAN AIR AGENCY (BCAA) JURISDICTION			
173-400-025	Adoption of Federal Rules.	07/01/16	
173-400-040	General Standards for Maximum Emissions.	07/01/16	Except: 173-400-040(2)(c); 173-400-040(2)(d); 173-400-040(3);

			173-400-040(4); 173-400-040(5); 173-400-040(7), second paragraph; 173-400-040(9)(a); 173-400-040(9)(b).
173-400-050	Emission Standards for Combustion and Incineration Units.	07/01/16	Except: 173-400-050(2) and 173-400-050(4) through (6).
173-400-060	Emission Standards for General Process Units.	07/01/16	
173-400-070	Emission Standards for Certain Source Categories.	07/01/16	Except: 173-400-070(7); 173-400-070(8).
173-400-105	Records, Monitoring, and Reporting.	07/01/16	
173-400-111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	07/01/16	Except: 173-400-111(3)(h); The part of 173-400-111(8)(a)(v) that says, <ul style="list-style-type: none"> <li>• “and 173-460-040,”;</li> </ul> 173-400-111(9).
173-400-171	Public Notice and Opportunity for Public Comment.	07/01/16	Except: The part of 173-400-171(3)(b) that says, <ul style="list-style-type: none"> <li>• “or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”;</li> </ul> 173-400-171(12).
173-400-810	Major Stationary Source and Major Modification Definitions	07/01/16	
173-400-830	Permitting Requirements	07/01/16	
173-400-840	Emission Offset Requirements	07/01/16	
173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL)	07/01/16	



We are also proposing to approve, but not incorporate by reference, the revised version of WAC 173-400-260 *Conflict of Interest*, state effective July 1, 2016. Consistent with prior actions on the Washington SIP, the EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are typically not incorporated by reference so as to avoid potential conflict with the EPA's independent authorities. Therefore, we propose to approve, WAC 173-400-260 into the Washington SIP, but not incorporate the provision by reference.

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations in the table in section III above. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 10 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed

action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 13, 2016.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 1, 2016.

Michelle L. Pirzadeh,  
Acting Regional Administrator,  
Region 10.

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